IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4941 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
MOHMAD IRFANULLA HABIBULLA KHATIB & 1 - Defendant(s)

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Appearance :
MR MENGDEY, AGP for Appellant(s) : 1 - 2.
MR MTM HAKIM for Defendant(s) : 1,
DELETED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The State Government and its authority are in appeal challenging the judgement and award dated 30th April, 1999 passed by the Motor Accident Claims Tribunal(Main)Godhra in M.A.C.P. No.240/1988.

2. In a vehicular accident which took place between a tanker owned by the State Government and a bus of State Road Transport Corporation on 30th September, 1987, the claimant i.e. opponent no.1 herein received bodily injuries. He therefore, filed the above-mentioned petition seeking a compensation of Rs.10 lakhs. from the appellant herein.

3. The Tribunal in the impugned judgement came to the conclusion that the accident was caused solely on account of negligent driving of the tanker owned by the State Government. To come to such a conclusion, the Tribunal relied on its earlier judgement rendered in certain other claim petitions arising out of the same accident. It may be noted that the claim petitions decided earlier as well as in the present claim petition, the driver of the S.T. Bus was not held responsible for causing the accident.

4. Considering the nature of injuries and extensive

treatment that the claimant had to receive, the Tribunal awarded a total sum of Rs.3,04,000/- to the claimant. It may be noted that the claimant had received compound fracture and had to undergo a treatment for an extended period, rendering him unable to discharge his normal duties for a period of nearly three years.

5. In the present appeal, main ground urged by the appellant is that the tanker in question was insured with New India Insurance Company. It is contended that in the earlier group of petitions being M.A.C.P. No.74/1988 and connected matters, the said insurance company was held liable to satisfy the award. It is contended that the claimants erred in not joining the said insurance company as party respondent in the claim petition. It is additionally contended that the claimant also did not join S.T. Bus driver or S.T. Corporation as an opponent before the Claims Tribunal.

6. Having heard learned AGP Mr. Mengdey for the appellant and Mr. Hakim for the claimants,we find that the appeal requires to be dismissed.

7. It may be noted that with respect to the quantification of compensation, no grounds have been urged in appeal memo, no serious submissions made before us. In that view of the matter the only focal point required to be

decided in appeal is whether the claimant's claim can be frustrated only on the ground that insurance company was not joined before the Claims Tribunal.

8. Learned advocate Mr. Hakim submitted that the appellants had not disclosed before the Claims Tribunal that the vehicle in question was insured nor supplied the details of insurance thereof. In that view of the matter, the claimant cannot be blamed for not joining insurance company as party respondent before the Claims Tribunal. Even otherwise, it is between the owner and insurance company to sort out the issue as to who will ultimately bear the burden of compensation awarded by the Tribunal. So far as claimant is concerned, the appellants cannot avoid their liability to satisfy the award only on the ground that the insurance company was not joined as party respondent in the Claim petition. Additionally, it may be noticed that in the claim petition decided by the Claims Tribunal earlier arising out of same accident, bus driven by the S.T. Corporation was exonerated from his liability in causing the accident.

9. In that view of the matter, non joinder of insurance company or non joinder of the S.T. Bus driver or S.T. Corporation cannot be pressed in service to frustrate the award passed by the

Claims Tribunal.

10. Considering the above position, we find no merits in the appeal, same is therefore, dismissed.

11. It is however, clarified that if the tanker in question was insured with New India Insurance Company, it would be open for the appellants to seek reimbursement in accordance with law, of the award amount deposited by the appellants.

12. Subject to above observations, the appeal is dismissed.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)